

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSE A. RIVERA SOTO,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

1:22-cv-09388 (JLR)

**SCHEDULING ORDER**

JENNIFER L. ROCHON, United States District Judge:

In accordance with this District's Standing Order governing challenges to denials of social security benefits (*see In re: Mots. J. Pleadings Social Sec. Cases*, 16-MC-0171), the following briefing schedule applies:

- **Within 90 days of service**, the Commissioner must serve and file the Electronic Certified Administrative Record (e-CAR), which will constitute the Commissioner's answer, or otherwise move against the complaint.
- If Plaintiff wishes to file a motion for judgment on the pleadings, Plaintiff must do so **within 60 days** of the date on which the e-CAR was filed. The motion must contain a full recitation of the relevant facts and a full description of the underlying administrative proceeding.
- The Commissioner must file an answering brief **within 60 days** of the filing of Plaintiff's motion.
- Plaintiff may file a reply **within 21 days** thereafter.

In addition, by separate Order today, the Court is referring this case to the assigned Magistrate Judge for a report and recommendation on any motion for judgment on the pleadings. Magistrate Judges are judges selected by the District Judges to serve for terms of eight years. Magistrate Judges are highly qualified and very experienced.

To conserve resources, to promote judicial efficiency, and in an effort to achieve a faster disposition of this matter, it is hereby ORDERED that the parties must discuss whether they are willing to consent, under 28 U.S.C. § 636(c), to conducting all further proceedings before the assigned Magistrate Judge. If the parties consent to having the Magistrate Judge decide the case, the Magistrate Judge replaces the District Judge, thereby speeding up the resolution of the case (because only one judge instead of two will be involved in the case). Any appeal from a Magistrate Judge's decision following consent is directly to the United States Court of Appeals for the Second Circuit in the same way that an appeal from a District Judge's decision would be taken. By contrast, if the parties do not consent to having the Magistrate Judge decide the case, the Magistrate Judge will first issue a Report and Recommendation, and the District Judge will then consider any objections either party has to the Report and Recommendation before a final judgment is entered, at which point an appeal to the Second Circuit could be taken.

If both parties consent to proceed before the Magistrate Judge, counsel for Defendant must, **within two weeks of the date on which Defendant enters an appearance**, file on ECF a fully executed Notice, Consent, and Reference of a Civil Action to a Magistrate Judge form, a copy of which is attached to this Order (and also available at <https://www.nysd.uscourts.gov/node/754>). If the Court approves that form, all further proceedings will then be conducted before the assigned Magistrate Judge rather than before the undersigned. An information sheet on proceedings before magistrate judges is also attached to this Order.


If you do not consent to having the Magistrate Judge decide your case, there will be no adverse consequences. If either party does not consent to conducting all further proceedings before the assigned Magistrate Judge, the parties must file a joint letter, **within two weeks of the**

**date on which Defendant enters an appearance** advising the Court that the parties do not consent, **but without disclosing the identity of the party or parties who do not consent.**

The Clerk of the Court is directed to mail a copy of this Order to Plaintiff.

Dated: November 14, 2022  
New York, New York

SO ORDERED.

  
\_\_\_\_\_  
JENNIFER L. ROCHON  
United States District Judge

## UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff*

v.

\_\_\_\_\_  
*Defendant*)  
)  
)  
)  
)

Civil Action No. \_\_\_\_\_

**NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE**

*Notice of a magistrate judge's availability.* A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

*Consent to a magistrate judge's authority.* The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

*Printed names of parties and attorneys**Signatures of parties or attorneys**Dates*

_____	_____	_____
_____	_____	_____
_____	_____	_____

**Reference Order**

**IT IS ORDERED:** This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: \_\_\_\_\_

\_\_\_\_\_  
*District Judge's signature*\_\_\_\_\_  
*Printed name and title*

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.



**United States District Court  
Southern District of New York**

**UNITED STATES MAGISTRATE JUDGES:  
REFERRALS AND CONSENTS**

All cases in the Southern District of New York are assigned to two judges: a district judge and a magistrate judge. District judges are appointed for life terms by the President. Magistrate judges are selected by a majority vote of the district judges in the particular district and serve terms of eight years.

**Referrals to the Magistrate Judge.** The district judge assigned to your case may refer the case to a magistrate judge for specific purposes. Commonly, the referral will be for the magistrate judge to conduct the proceedings that occur before trial, such as resolving discovery disputes or presiding over settlement conferences. A referral may also be made for the magistrate judge to issue to the district judge a report and recommendation on how to resolve a motion, such as a motion to dismiss or a motion for summary judgment. The consent of the parties is not needed for the district judge to refer the case to the magistrate judge for these purposes. If the district judge has made such a referral, you can ask the district judge to review any magistrate judge's decision by filing an objection with the district judge within fourteen days of that decision. The district judge will rule on any timely objections that you file. If you do not file an objection, you will give up your right to challenge the magistrate judge's decision at a later time, including on appeal. *See* Rule 72 of the Federal Rules of Civil Procedure.

**Consent to Proceed Before the Magistrate Judge.** If you would like your case to move more quickly, it is helpful to consent to proceed before the magistrate judge for all purposes, including any trial. If all parties consent, the magistrate judge will perform the identical function that the district judge would have performed. Any trial in your case would be either a jury or a nonjury trial, depending upon whether there is a right to a jury trial and a proper request for such a trial. The only difference is that the magistrate judge – and not the district judge – would preside over that trial. Cases that proceed for all purposes before a magistrate judge generally move more quickly than cases before a district judge. If all parties consent to proceed before the magistrate judge, the district judge plays no further role in the case. Any appeal is taken directly to the Court of Appeals. It is your choice whether or not to consent to proceed before the magistrate judge.

A copy of the appropriate consent form is attached. Additional forms are also available from the Pro Se Intake Unit and on the Court's website.